

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

adidas America, Inc., et al., ) 3:15-cv-02113-SI  
Plaintiffs, )  
vs. ) August 19, 2016  
TRB Acquisitions, LLC )  
Defendant. ) Portland, Oregon

(Telephonic Motion Hearing)

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MICHAEL H. SIMON

UNITED STATES DISTRICT COURT JUDGE

1 MR. REITER: Your Honor, this is Allen Reiter. I  
2 appreciate the Court's attention to this matter and the  
3 opportunity to address this issue.

4 As we pointed out in the letter, in the e-mail that  
5 we filed last night, our client is a very small company. Most  
6 of the people have moved and are on the same floor. A number  
7 of the licensees are in the same building, and all of them are  
8 within a few blocks of each other.

9 So unlike a company like adidas, which has  
10 international operations, it is easier for the people in this  
11 company to communicate by speaking to each other, at least not  
12 telefax and e-mails, and we have not conducted a diligent  
13 search, and we haven't failed to produce responsive e-mails.  
14 We have spent an enormous amount of time and money going  
15 through e-mails to find those that are responsive. Really all  
16 that plaintiff is saying is that they think there should be  
17 more, and the answer to that is that there aren't.

18 THE COURT: All right. Thank you, Mr. Reiter.

19 Here is what I'm going to do on this issue, although  
20 I will hear from Ms. Chollet or Mr. Feldman in a moment,  
21 especially so they can respond to my point here.

22 I think that that should answer plaintiffs' concerns.  
23 But if plaintiffs are not satisfied, plaintiff may take a  
24 Rule 30(b)(6) deposition that will not count towards any  
25 limitations on plaintiffs' discovery of the person or persons

1 responsible for formulating, conducting, and implementing the  
2 search for responsive e-mails. If any issues arise, they can  
3 be brought to my attention later. But if plaintiff wants to  
4 take that deposition of that person to find out precisely what  
5 was done, what was looked for, who was inquired, things like  
6 that, they may do that. Obviously that's not a waiver of any  
7 attorney-client privilege. But I do think it is appropriate to  
8 take discovery of a person who is responsible for searching for  
9 and gathering responsive documents to see exactly what they  
10 did.

11 So will that satisfy plaintiffs' needs at this time?

12 Obviously, by the way, if plaintiff is satisfied with  
13 Mr. Reiter's response now, they don't need to take that  
14 deposition. But if they want to, they may.

15 So does that satisfy plaintiffs' needs at this time,  
16 Ms. Chollet or Mr. Feldman?

17 MS. CHOLLET: Yes. Thank you.

18 THE COURT: All right.

19 The next item on my agenda, but continuing with  
20 plaintiffs' concerns -- we will get to defendant's concerns  
21 later. Apparently plaintiffs have served third-party subpoenas  
22 on 14 of TRB's licensees. In the e-mail request I received I  
23 believe yesterday from plaintiffs they wanted a response on  
24 August 26th. But as I read both the rules, Rule 34 as well as  
25 the response by the defendant today, the responses that the

1 produced, and you all need to discuss that among yourselves  
2 before involving the Court.

3 But I will say this: Any time plaintiffs want and,  
4 by the way, the same is going to hold true for the defendants  
5 in mirror image, any time a party wants and believes there has  
6 been insufficient compliance with discovery, you're welcome to  
7 take a 30(b)(6) deposition of the person or persons responsible  
8 for gathering that discovery and ask what steps were taken to  
9 gather responsive documents, what steps weren't taken and why  
10 were they not taken, and why were certain documents not  
11 produced. Then if anyone has any issues that they believe  
12 warrant the Court's attention after that information has been  
13 exchanged or learned and after, of course, you have an  
14 additional conference with each other, you're welcome to raise  
15 them with me. But I don't think right now I need to get into  
16 any discussion with anyone about whether or not those documents  
17 in the Philippines should or should not have been produced  
18 here, were or were not responsive, or why they may not have  
19 been produced yet.

20 Does anyone disagree with that analysis that I've  
21 just given? First, plaintiffs.

22 MS. CHOLLET: No. Your Honor, that's fine. We will  
23 continue to confer with TRB on this matter.

24 THE COURT: Mr. Reiter, anything to say about that?

25 MR. REITER: Well, Your Honor, I think your ruling